IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1897 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RABIBHAI NARUBHAI SWAI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 1897 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 06/04/2004

ORAL JUDGEMENT

The petitioner has filed this petition under

under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside an order dated 3.11.2003 passed by respondent No.2 under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short, 'the PASA Act') directing detention of the present petitioner on the grounds stated in the detention order.

2. It was alleged against the petitioner that three cases of prohibition under sections 65 and 66 of the Bombay Prohibition Act, 1949 were registered before North prohibition police station CR Nos. 936/03, 1076/03 and 1421/03 and that two witnesses had given statements against the petitioner and, therefore, the petitioner was found to be a bootlegger and hence she was ordered to be detained. The petitioner has challenged the detention order on the ground that the alleged activity would not be treated to be a threat to public order or public health. It has also been contended that the names of the unnamed witnesses who had rendered their statements have not been disclosed to the petitioner and, therefore, the petitioner could not effectively represent her case. It has been contended that the petitioner had submitted his representation to the detaining authority on 29.1.12004. That thereafter it was forwarded to the State Government and the State Government considered and rejected the same on 6.2.2004. But the communication was conveyed to him as late as on 16.2.2004 and, therefore, there was a delay in communicating the decision and, therefore, continuance of the detention of the petitioner would not be justified. That therefore, the order of detention is illegal and deserves to be quashed and set aside and the petitioner be set at liberty forthwith.

3. On receipt of the petition, rule was issued and in response to the service of notice of rule, Ms Mita Panchal, learned AGP appears on behalf of the respondents. I have heard the learned Advocates for the parties and have perused the papers.

4. During the course of hearing, learned Advocate for the petitioner has invited my attention to the representation made on 29.1.2004 at page 23 to the petition. It shows that the representation was sent to the detaining authority. There is no dispute about the same. He has also produced a communication sent by the State Government to the petitioner stating that his representation dated 29.1.2004 was rejected by the State. The decision appears to be of 6.2.2004 and the communication appears to have been sent on 6.2.2004. It shows that the decision was taken on 6.2.2004 and it was

shown to be conveyed to the petitioner on 6.2.2004. However, on the reverse side, it can be gathered that the jail authority had communicated the said decision to the petitioner on 16.2.2004. The communication was sent on 6.2.2004 which could not reach the jail authority on or around 16.2.2004. It is not on record as to the date on which the jail authority received the same. However, the communication was conveyed to the petitioner on 16.2.2004 and there was a delay in communicating the same. The said communication is taken on record.

5. Learned Advocate for the petitioner has relied upon a decision of this court in Special Civil Application No.12380/2002 dated 21.5.2003 (Coram: Kshitij R Vyas). There the detenu had submitted representation to the State Government through Advocate on 2.12.2002 and it was received by the concerned department on 4.12.2002. The said representation was rejected on 5.12.2002. But it was conveyed to the detenu on 9.12.2002. Therefore, there was a delay in communication by about 4 days. After considering a decision of Harish Pahwa v. State of UP, AIR 1981 SC 1126, this court held that the delay in communication of the decision is fatal and further continuance of the detention cannot be sustained. Para 3 of the said decision is relevant. The same is reproduced herebelow:

> "3. In the instant case, no affidavit is filed on behalf of the State Government. Learned AGP Ms. Nandini Joshi fairly states that 6.12.2002 and 8.12.2002 were public holidays. However, she frankly concedes that 7.12.2002 being working Saturday, the State Government could have communicated the decision on 7.12.2002 on the representation submitted on behalf of the detenu. Having not done so in the instant case, in view of the decision rendered by the Apex Court, I have no option but to declare continued detention of the petitioner unconstitutional."

6. Considering the above principles laid down in the aforesaid decision of this court, in AIR 1981 SC 1126 (supra), it has to be accepted that there was delay in communicating the decision and there is no explanation on record to explain the delay caused in conveying the communication. In that view of the matter, further continuance of the detention of the petitioner cannot be sustained in the eye of law and, therefore, it is required to be set aside. This can be done by setting aside the order of detention by allowing the petition.

7. For the foregoing reasons, this petition is allowed. The impugned order dated 3.11.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]

msp